NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

In the Matter of: FRANKLIN IVAN MIXON, Debtor, FRANKLIN IVAN MIXON, Appellant, v. TWIN ASSETS, LLC; et al., Appellees.	No. 06-35896 BAP No. WW-05-01416-KDMc MEMORANDUM [*]

Appeal from the Ninth Circuit
Bankruptcy Appellate Panel
Klein, Dunn, and McManus, Bankruptcy Judges, Presiding

Submitted July 22, 2008 [**]

[*] This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

[**] The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

tk/Research

Before: B. FLETCHER, THOMAS, and WARDLAW, Circuit Judges.

Franklin Ivan Mixon appeals pro se from the Bankruptcy Appellate Panel's ("BAP") decision affirming the bankruptcy court's order denying his motion to reconsider. We have jurisdiction under 28 U.S.C. § 158(d). We review de novo. *Smith v. Pac. Props. & Dev. Corp.*, 358 F.3d 1097, 1100 (9th Cir. 2004). We may affirm on any basis supported by the record. *Dittman v. California*, 191 F.3d 1020, 1027 n.3 (9th Cir. 1999). We affirm.

The BAP properly concluded that the bankruptcy court did not abuse its discretion when it denied the motion to reconsider because an automatic stay does not necessarily reinstate retroactively upon the vacation of a dismissal. *See Sewell v. MGF Funding, Inc. (In re Sewell)*, 345 B.R. 174, 180 (B.A.P. 9th Cir. 2006).

Mixon's contentions that he was denied due process lack merit. The record supports the bankruptcy court's finding that Mixon and his attorney were properly served with the trustee's motion to dismiss. Moreover, as a contested matter, the dismissal was not subject to the 10-day stay prescribed by Rule 62(a) of the Federal Rules of Civil Procedure and incorporated by Rule 7062 of the Federal Rules of Bankruptcy Procedure. *See* Fed. R. Bank. P. 9014; *see also Ewell v. Diebert (In re Ewell)*, 958 F.2d 276, 279 (9th Cir. 1992).

Before the BAP Mixon failed to challenge the bankruptcy court's abstention from addressing the validity of the foreclosure sale or the bankruptcy court's finding that Twin Assets was not required to seek relief from the automatic stay, and therefore waived these arguments. *See Burnett v. Resurgent Capital Servs. (In re Burnett)*, 435 F.3d 971, 975-76 (9th Cir. 2006) (stating that, absent exceptional circumstances, issues not raised before the BAP are waived).

Mixon's remaining contentions are unpersuasive.

AFFIRMED.